

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Union Electric Company	:	00-0441
	:	01-0381
Reconciliation of revenues	:	02-0171
collected under Coal Tar riders	:	(Consolidated)
with prudent costs associated with	:	
coal tar clean-up expenditures.	:	

ORDER

By the Commission:

In the instant proceedings, Docket Nos. 00-0441, 01-0381 and 02-0171, the Illinois Commerce Commission ("Commission"), on its own motion, entered separate orders commencing the above-referenced reconciliation proceedings. In those orders, Union Electric Company ("UE" or "Company") was directed to present evidence reconciling the revenues collected under its coal tar riders with prudent costs associated with coal tar clean-up expenditures for 1999, 2000 and 2001. These dockets are consolidated.

Pursuant to proper notice, hearings were held in these matters before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by UE, through its counsel, and by the Commission Staff ("Staff"). Testimony was presented by UE and Staff. At the conclusion of the hearings, the records were marked "Heard and Taken."

Background: Dockets 91-0080 through 91-0095

In Docket Nos. 91-0080 through 91-0095 (Cons.), the Commission initiated a proceeding to consider issues related to the ratemaking treatment of costs that have been or will be incurred by Illinois gas and electric utilities in connection with environmental remediation arising from the operation and decommissioning of manufactured gas plants ("MGPs"). All gas and electric utilities were named as parties in the initiating order.

On September 30, 1992, the Commission entered a final order in the consolidated proceeding. The Commission found there should be a presumption that MGPs were properly operated and retired; that utilities could recover the prudently-incurred costs of environmental remediation arising from the operation and decommissioning of MGPs; that the preferable, but not exclusive means of recovery

was through a rider with a prudence review; and that a sharing of clean-up costs between ratepayers and shareholders should be achieved by requiring that costs be amortized over five years with no recovery of carrying costs on the unrecovered balance.

Regarding the preference for use of a rider, the Commission stated in part that given the wide variations in and the difficulties in making forecasts of the scope, costs and timing of coal tar investigation and remediation activities, riders can generally be expected to provide a more accurate and efficient means of tracking costs and matching such costs with recoveries than would be achieved by base rate recovery methods.

In its Order of September 30, 1992, the Commission found that rider mechanisms should be subject to an annual reconciliation with a prudence review. The Commission explained that a rider which lacks a prudence review does not provide a sufficient means of ensuring that the utility's clean-up activities and costs were necessary or cost effective, and should not be implemented. The Commission further stated on page 81 that in order to properly assess the necessity for and reasonableness of a utility's remediation costs and activities, the standards to be applied in the review thereof shall include those guidelines identified on pages 78-79 of the Order, as well as the other guidelines found appropriate in the Order. The four guidelines on pages 78-79 are:

- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance; and
- (4) based on facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made.

On page 84 of the Order, the Commission also found that questions relating to a utility's interaction with the Illinois Environmental Protection Agency ("IEPA") are relevant considerations in the prudence review process. The September 30, 1992 Order further provides, on page 48, that utilities' actions relating to their pursuit of recovery from insurers and potentially responsible parties ("PRPs"), and the costs and results thereof, are proper subjects of attention in future proceedings.

The Commission's Order was appealed by various parties. In an opinion issued on April 20, 1995, the Illinois Supreme Court held that "the decision of the Commission to require utilities to share the statutorily imposed costs of coal-tar remediation was 'not supported by substantial evidence based on the entire record of evidence'", reversed the judgment of the Appellate Court regarding the "sharing portion of the order," and remanded "that portion of the order to the Commission to enter an order consistent with [its] opinion." *Citizens Utility Board v. Commerce Comm'n*, 166 Ill.2d 111, 651 N.E.2d

1089, 209 Ill.Dec. 641 (1995). The Supreme Court rejected all other challenges to the Commission's Order of September 30, 1992.

On November 21, 1995, the Commission entered an Order on Remand. In that Order the Commission found that carrying charges on prudently incurred remediation costs should accrue from the date of the Supreme Court's opinion to the extent that such costs are otherwise eligible for recovery under the Order of September 30, 1992 and are accrued but unrecovered on and after April 20, 1995. The Commission stated that the utility's after-tax cost of capital was the appropriate carrying charge rate for remediation costs. In other respects, it affirmed and adopted the determinations made in the September 30, 1992 Order relating to riders and other recovery methods.

UE's Riders

UE provides electric service to approximately 63,000 customers in and around the cities of Alton and East St. Louis, Illinois and natural gas service to approximately 18,000 customers in the Alton area. The Company has two riders designed to recover costs associated with the investigation and remediation of MGP sites. These riders are identified as Rider R, Electric Environmental Adjustment Clause ("EEAC") and Rider E, Gas Environmental Adjustment Clause ("GEAC"). Regarding EAC costs, these riders provide:

EAC Costs are all costs paid or payable to parties other than Company employees (including legal fees) which are associated with Environmental Remediation Activities. EAC Costs shall also include Allowable Carrying Charges associated with the deferral of EAC Costs. EAC Costs will be credited to reflect proceeds received from insurance carriers or other entities which represent reimbursement of costs associated with Environmental Remediation Activities. EAC Costs shall not include the salaries of Company employees, or any benefits related thereto. EAC Costs for an Annual Recovery Period also shall not include costs accrued under Statement of Financial Accounting Standards No. 5 ("SFAS No. 5") for which no cash expenditure is forecasted during the Annual Recovery Period. Such SFAS No. 5 costs shall be recoverable as EAC costs in the Annual Recovery Period during which cash expenditures are forecasted. Prior to the time that costs accrued under the SFAS No. 5 are recovered under the GEAC, such costs may be deferred in Account 186.

With respect to Environmental Remediation Activities, the EAC riders provide as follows:

Environmental Remediation Activities shall include: (i) direct or indirect activities associated with the investigation, clean-up, sampling, monitoring, testing, removal, and/or disposal of material, residues, wastes or substances related to manufactured gas site operations, the dismantling of facilities used in connection with manufactured gas site operations and/or

other activity which generated substances subject to Federal, State or local environmental laws or regulations at sites where manufactured gas operations were at any time conducted; and (ii) litigation or other legal activities related to the activities hereinabove listed, including, but not limited to, litigation or legal activities associated with efforts to recover costs associated with any such activities from insurers or other responsible parties

The only amounts that are recoverable through the Riders are those which are paid for services from outside vendors. That is, expenses for work performed by Company personnel are not recoverable through the Riders.

Under the Riders, cost recovery is allocated to both electric and gas customers, including transportation customers.

**Nature, Scope and Cost of EAC Activities; Prudence Standards;
Reconciliation of Recoveries and Expenditures**

UE has identified one MGP sites for which it has incurred, and will continue to incur, environmental cleanup costs as a potentially responsible party ("PRP") under state and federal law. This site is located at Alton, Illinois.

EAC costs incurred in each year were reflected in reconciliation filings that are the subject of the instant dockets. For each annual period, these costs are reconciled with EAC revenues from ratepayers.

UE witnesses testified that the Company is required by federal and state law to incur costs for the investigation and remediation of MGP sites. Under the Comprehensive Environmental Response, Compensation and Liability Act and the Illinois Environmental Protection Act, liability for the cost of remediating MGP sites extends to any current owner of an MGP site; any entity that owned or operated an MGP site at the time of disposal; and any successor in interest to such entities. Under these standards, UE says it is legally responsible for the investigation and remediation of the Alton site. UE asserts that all phases of the MGP site investigations have been and will continue to be subject to review and approval by the IEPA.

UE witnesses testified that the company has managed the investigation of the Alton site in the most cost effective manner possible, consistent with UE's obligation under federal and state law, regulatory requirements and the application of reasonable and appropriate business standards. These witnesses testified that all costs incurred during the reconciliation periods were related to investigation of the Alton site and the evaluation of remediation alternatives for that location, and that all such activities were conducted in a least-cost manner.

As UE witnesses explained, the Company has taken a phased approach to MGP investigations. Company witnesses testified that the Tiered Approach to Corrective Action Objectives ("TACO") program developed and administered by the IEPA ensures a thorough approach, while also minimizing costs, and is being used at the Alton site. They stated that initial investigation work at Alton was performed prior to development of the TACO program, and that in 2002 the Company was engaged in the process of revising a site investigation report for resubmission to the IEPA in order to comply with TACO program requirements.

Under the Company's present schedule, actual remediation of the Alton site is expected to begin in 2003 if negotiations with the site owner and tenant proceed favorably. UE witnesses described the technologies available for remediation of MGP sites, and they stated that a specific cleanup plan has not been selected for the Alton site. (UE Ex. 2 at 2-4 in 02-0171). UE also provided an estimated range of costs for the remediation work at Alton. (UE Ex. 2 at 8-9 in 02-0171)

A cumulative summary of **EAC costs and recoveries**, including insurance recoveries, through December 31, 2001, is shown in UE and Staff exhibits, including Schedule 1.01 of Staff Exhibit 1.00 presented in Docket 02-0171. UE's witnesses also described the remediation-related activities at the Alton site for each reconciliation year. To date, as noted above, these activities and associated costs have involved investigation of the site and evaluation of remediation alternatives.

For the 1999 reconciliation year, EAC costs were \$12,222, which reflects a Staff adjustment decreasing the amount originally proposed by UE. Rider recoveries were \$43,033. At the close of the reconciliation period, cumulative over-recoveries, net of an under-recovery balance carried forward from prior periods, were \$29,548. (Staff Ex. 1, Sch. 1 at 1-2, Dkt. 00-0441)

For the 2000 reconciliation year, EAC costs were \$8,754. Rider recoveries were negative \$12,869, reflecting refunds or credits for a portion of the over-recovery balance carried forward into that year. The cumulative over-recovery balance as of December 31, 2000 was \$7,925. (Staff Ex. 1, Sch. 1, Dkt. 01-0381)

For the 2001 reconciliation year, allowable EAC costs were reduced from \$3,622 to \$1,325, to reflect a Staff-proposed disallowance of \$2,297 that UE did not oppose for purposes of this proceeding. For that year, rider recoveries from ratepayers were negative \$5,384. (Staff Ex. 1.00, Sch. 1.01, Dkt. 02-0171)

Cumulative EAC costs as of December 31, 2001, including the three reconciliation years and periods prior thereto, were \$480,046. Cumulative EAC recoveries through 2001, including the three reconciliation years and periods prior thereto, were \$481,262, for a cumulative over-recovery of \$1,216. (Staff Ex. 1.00, Sch. 1.01 in 02-0171)

The amounts shown above for the reconciliation periods in question reflect all disallowances, corrections and other adjustments proposed by Staff. These adjustments were individually identified in the record, and for purposes of these proceedings only, they were accepted by UE.

Regarding insurance, UE witnesses stated that the Company did not carry property damage insurance on the Alton MGP site, and has not recovered any insurance proceeds relating to that site. (UE Ex. 1 at 4, Dkt. 01-0381)

Staff witnesses testified that they reviewed the **prudence** of the costs incurred by UE for each of the reconciliation years. As part of their review, they examined responses to Staff data requests that contained additional information regarding the need for and reasonableness of the Company's MGP remediation activities and expenditures. A number of these data requests were admitted into the evidentiary record. In performing their prudence review, Staff witnesses applied the prudence standards enumerated in the Commission's Order of September 30, 1992 in Docket Nos. 91-0080 through 91-0095 at 78-81, and on page 2 above. Staff witnesses found no indication that any of the MGP remediation costs incurred by UE during the reconciliation years in question failed to meet those standards of prudence.

Having reviewed the record, and subject to the determinations made herein, the Commission finds that the methods used by UE and Staff in reconciling recoveries and expenditures for the periods in question are appropriate, and that the reconciliations as calculated in the above-referenced Staff exhibits are correct.

The Commission has also reviewed the evidence regarding the purpose, nature and scope of UE's MGP site remediation activities and expenditures for the reconciliation years in question. Based on the record herein, and subject to the adjustments proposed by Staff, the Commission concludes that UE's expenditures satisfy the prudence standards established in Dockets 91-0080 through 91-0095 (cons.) and were appropriate.

Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record herein, is of the opinion and finds that:

- (1) The Commission has jurisdiction of the parties and the subject matter herein;
- (2) the facts recited and determinations made in the prefatory portion of this Order are supported by the record, and are hereby adopted as findings of fact;
- (3) the reconciliation of UE's MGP site remediation costs and recoveries for the reconciliation years in question, as adjusted by Staff, should be approved.

IT IS THEREFORE ORDERED that UE's proposed reconciliation of revenues and costs under Riders EEAC and GEAC for the reconciliation periods described above, as adjusted by Staff and as shown in the Staff exhibits identified above, is hereby approved, subject to the terms, conditions and other determinations made herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 12th day of March, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman